

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CIVIL CASE NO. 1:18-cv-00302-MR
[CRIMINAL CASE NO. 1:16-cr-00051-MR-WCM-2]**

SAMUEL ZUNIGA MEDINA,

Petitioner,

VS.

UNITED STATES OF AMERICA,

Respondent.

ORDER

THIS MATTER is before the Court on Petitioner's Motion to Supplement his Motion to Vacate, filed pursuant to 28 U.S.C. § 2255. [Doc. 5]. For the following reasons, the Court denies the motion.

Petitioner pleaded guilty to conspiracy to distribute methamphetamine and was sentenced to 188 months of imprisonment. [Crim. Case No. 1:16-cr-00051-MR-WCM-2 (“CR”), Doc. 125: Judgment]. Petitioner appealed, and the Fourth Circuit subsequently dismissed the appeal. [CR Doc. 138]. Petitioner filed the pending motion to vacate on October 25, 2018, raising a claim of ineffective assistance of counsel and a claim for a due process violation. [Doc. 1]. After the Government filed its Response, Petitioner filed the pending motion to supplement, seeking relief under the First Step Act of

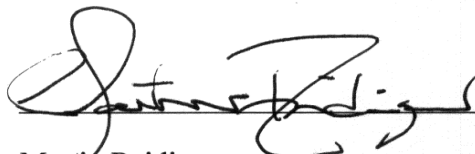
2018, Pub. Law 115-391 (S. 756), 132 Stat. 5194 (enacted Dec. 21, 2018). Petitioner contends that he is eligible for a sentence reduction under Section 402(a) of the Act, “relating to the broadening of existing safety valve.” [Doc. 5 at 1].

Petitioner is not entitled to relief under Section 2255 through his motion to supplement. Petitioner purports to raise a claim that is in substance one of sentencing relief under 18 U.S.C. § 3852(c)(1)(B), and Petitioner must seek such relief on this claim, if at all, by filing a motion in his criminal case. Thus, the Court will deny Petitioner’s motion without prejudice to Petitioner to bring a motion for reduction of sentence in his underlying criminal action.

IT IS, THEREFORE, ORDERED that Petitioner’s Motion to Supplement [Doc. 5] is denied without prejudice to Petitioner to bring a motion for reduction of sentence in his underlying criminal action.

IT IS SO ORDERED.

Signed: February 5, 2019


Martin Reidinger
United States District Judge

